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DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

27 CFR Parts 447 and 479

[Docket No. ATF 26F; AG Order No. 3417-2014]

RIN 1140-AA42

Importation of Arms, Ammunition and Implements of War and Machine Guns, Destructive Devices, and Certain Other Firearms; Extending the Term of Import Permits (2010R-26P)

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), Department of Justice.

ACTION: Final rule.

SUMMARY: This rule amends the regulations of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) to extend the standard term of import permits for firearms, ammunition, and defense articles from 1 year to 2 years. The additional time will allow importers sufficient time to complete the importation of the authorized commodity. In addition, it will eliminate the need for the importer to submit a new import application, ATF Form 6, where the importation was not completed within the 1-year period. Extending the term of import permits will result in a substantial cost and time savings for both the industry and ATF, and will not cause any discernible adverse

effects. This rulemaking proceeding is included in the Department of Justice's retrospective review plan developed pursuant to Executive Order 13563, "Improving Regulation and Regulatory Review."

DATES: This rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Denise Brown, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives, U.S. Department of Justice, 99 New York Avenue, NE., Washington, DC 20226, telephone (202) 648-7070.

SUPPLEMENTARY INFORMATION:

I. Background

The Attorney General is responsible for enforcing the provisions of section 38 of the Arms Export Control Act of 1976 (AECA), 22 U.S.C. 2778, that relate to the permanent importation of defense articles and defense services; and the National Firearms Act (NFA), 26 U.S.C. Chapter 53, and the Gun Control Act of 1968 (GCA), 18 U.S.C. Chapter 44, relating to commerce in firearms and ammunition. The Attorney General has delegated all of those responsibilities to the Director of ATF (Director), subject to the direction of the Attorney General and the Deputy Attorney General. 28 CFR 0.130.

A. Importation of Arms, Ammunition, and Implements of War (27 CFR Part 447)

Regulations that implement the provisions of the AECA that are concerned with the importation of arms, ammunition, and implements of war are set forth in 27 CFR Part 447. The regulation at 27 CFR 447.41(a) generally provides that articles on the U.S.

Munitions Import List may not be imported into the United States except pursuant to a permit. Section 447.42(a) states that persons required to obtain a permit must file with ATF an ATF Form 6—Part I (5330.3A), “Application and Permit for Importation of Firearms, Ammunition and Implements of War” (ATF Form 6). The application must be signed and dated and must contain the information requested on the form.

Section 447.43(a) provides that import permits are valid for 1 year from their issuance date unless a different period of validity is stated thereon. Furthermore, under section 447.43(b), if shipment cannot be completed during the period of validity of the permit, another application must be submitted for a permit to cover the unshipped balance.

B. Importation of Machine Guns, Destructive Devices, and Certain Other Firearms
Under the NFA (27 CFR Part 479)

Regulations that implement the provisions of the NFA are set forth in 27 CFR Part 479, which contains the procedural and substantive requirements relative to the importation, manufacture, making, exportation, transfer, taxing, identification and registration of, and the dealing in, machine guns, destructive devices, and certain other firearms. The regulation at 27 CFR 479.111(a) provides that no firearm may be imported or brought into the United States or any territory under its control or jurisdiction unless the person importing or bringing in the firearm establishes to the satisfaction of the Director that the firearm to be imported or brought in is being imported or brought in for certain specified purposes, e.g., scientific or research purposes. This paragraph further provides that any person desiring to import or bring a firearm into the United States must file with the Director an application on ATF Form 6. For NFA firearms, the approval of

an application to import a firearm shall be automatically terminated at the expiration of 1 year from the date of approval unless, upon request, it is further extended by the Director.

Section 479.113 provides that the Director shall permit the conditional importation of any NFA firearm for the purpose of examining and testing to determine whether the importation of such firearm will be authorized. An application under this section shall be filed with the Director on ATF Form 6. The Director may impose conditions upon any importation, and the person importing the firearm must agree to either export or destroy the weapon if a final determination is made that it may not be imported.

C. Importation of Firearms and Ammunition (27 CFR Part 478)

Regulations in Subpart G of part 478 provide the procedural and substantive requirements of the GCA relative to the importation of firearms and ammunition. Section 478.112 states that no firearm, firearm barrel, or ammunition shall be imported or brought into the United States by a licensed importer unless the Director has authorized the importation of the firearm, firearm barrel, or ammunition. This section further provides that the licensed importer must file with the Director an application for a permit, ATF Form 6, to import or bring a firearm, firearm barrel, or ammunition into the United States. If the Director approves the application, such approved application will serve as the permit to import the firearm, firearm barrel, or ammunition described on the permit, and importation of such firearms, firearm barrels, or ammunition may continue to be made by the licensed importer under the approved application (permit) during the period specified on the permit.

Similar procedures are set forth in section 478.113 with respect to the importation of a firearm, firearm barrel, or ammunition into the United States by a licensee other than a licensed importer.

Requirements for the conditional importation of firearms, firearm barrels, and ammunition for the purpose of examination and testing to determine whether the Director will authorize their importation are set forth in section 478.116. This section provides that an application on ATF Form 6 for such conditional importation must be filed with the Director. If approved, the Director may impose conditions on the importation, and the person importing the firearm, firearm barrel, or ammunition must agree to either export or destroy the imported item if it is determined that the item may not be imported.

II. FAIR Trade Group Petition

ATF received a petition, dated August 10, 2010, filed on behalf of the FireArms Import-Export Roundtable (FAIR) Trade Group. As stated in the petition, FAIR is an organization that represents importers and exporters of firearms, ammunition, firearms parts, and accessories. The petitioner requested an amendment of the regulations to change the ATF Form 6 period of validity from 1 year to 2 years. According to the petitioner, this amendment would be beneficial to both the industry and to ATF, without having any impact on public safety or compliance with the law. As stated in the petition:

[E]xtending the period a license [permit] is valid could reduce the workload for [ATF] examiners by lowering the number of renewals submitted to ATF and reduce the uncertainty importers face when dealing with long-lead time deals. [Many licensed and/or registered importers import the same defense articles year after year. ATF processes these “renewal” permits.] . . . Renewals of existing permits are perfunctory processes that consume the valuable resources of both the industry and the ATF.

Increasing the term of an import permit to 2 years would also result in an economic benefit for ATF. Of the approximately 11,000 ATF Form 6 import applications ATF processes each year, 9,000 are submitted by an ATF licensed or registered importer. Subsequent information provided by the petitioner estimates that the renewal rate on import permits for industry members is approximately 50 percent. If the term of an

import permit is changed from 1 year to 2 years, ATF estimates the number of import permit applications submitted by licensed or registered importers would be reduced to 4,500 each year. ATF employs data entry contractors who spend an average of 2 hours completing quality review and data entry functions for each import application. The average salary of a contractor is \$14 per hour. ATF examiners typically spend 4 hours processing an ATF Form 6 application. The average hourly rate for an examiner is \$24.74. If the number of applications was reduced to 4,500 each year, the annual savings to ATF would be approximately \$571,320.

III. Proposed Rule

The Department determined that an amendment of the regulations to extend the term of import permits for firearms, ammunition, and defense articles from 1 year to 2 years is warranted. Accordingly, in order to reduce the paperwork burden on the industry and to increase the efficiency of ATF in processing requests for importation, the Department proposed to amend the regulations in parts 447 and 479 to increase the term of import permits from 1 year to 2 years (Notice No. ATF 43P, Feb. 6, 2012, 77 FR 5735).

Because the regulations in part 478 do not specify the period of validity for import permits as 1 year, the Department did not propose to amend the regulations in part 478. The regulations in part 478 provide that importation may continue to be made by the applicant during the period specified on the approved application (permit). As stated on the ATF Form 6, the permit is valid for 12 months from the Director's approval date on the permit. If the proposed regulations were adopted, the ATF Form 6 would be revised to reflect the amended period of validity for importation as 2 years from the Director's approval date on the permit.

The term of validity for import permits filed by members of the United States military returning to the United States from abroad with firearms, and for nonimmigrant aliens temporarily importing firearms into the United States for lawful hunting and sporting purposes was not affected by the proposed rule and would remain at 1 year. The comment period for Notice No. ATF 43P closed on May 7, 2012.

IV. Analysis of Comments and Department Responses

In response to Notice No. ATF 43P, ATF received four comments. Two commenters supported the proposed rule and two commenters indicated opposition to the proposed rule.

Comments Received in Support

One of the commenters, the National Shooting Sports Foundation, Inc. (NSSF), indicated support for the proposed rule and stated that “[t]his change would significantly benefit both ATF and U.S. importers without reducing ATF’s ability to administer the 27 CFR 447 regulations and to ensure that importers are in compliance with the law.” As stated in its comment, NSSF is a trade association for America’s firearms, ammunition, hunting, and shooting sports industry.

Another commenter expressed support for the proposed rule but raised two concerns that he believed needed to be addressed. The commenter’s first concern involves the source of some of the information presented in the proposed rule:

Indeed, the Notice seems to admit that certain information used in calculating the reduction in import permits that would result from the implementation of the new rule was provided by the FAIR Trade Group. At the same time however, ATF claims to have researched and provided certain information. This mix of sources may lead to the belief that ATF has simply accepted the FAIR Trade Group’s information, which, due to the fact that FAIR is not an independent body, could further lead to a belief that this rule is rooted in bias. . . . ATF could easily overcome any hints of bias by first conducting its own research regarding the renewal rate on import permits from registered industry members and then making that information available to the public along with the Notice.

The commenter's second concern involves safety, i.e., the proposed rule "offers no information as to what ramifications this change will have in regard to safety and national security." According to the commenter, while there are a number of conditions in the proposed rule that could lead one to conclude that safety and security are not an issue, e.g., there are no proposed changes to the information required on ATF Form 6, "without any statement from ATF, one is left to draw his or her own conclusions."

Department Response to Comments in Support

In the proposed rule, the Department stated that information provided by the petitioner indicates the renewal rate on import permits for industry members is approximately 50 percent. One commenter expressed concern regarding the source of this information, i.e., the petitioner, and suggested that ATF conduct its own research regarding the renewal rate on import permits. As stated in the proposed rule, ATF processes approximately 11,000 ATF Form 6 applications annually. Each permit is entered into ATF's database system as a "new" application. "Renewals" are not entered into the system as such. Accordingly, available data does not permit ATF to conduct the kind of independent research suggested by this commenter. Nevertheless, ATF's experience in processing thousands of ATF Form 6 applications every year supports the conclusion that the petitioner's estimate of a 50 percent annual renewal rate is not unreasonable. Moreover, even if that estimate is high it does not undercut the value of this rule. A renewal rate of even half of the estimate (i.e., 25 percent) would still produce substantial savings to both the industry and ATF.

Regarding the commenter's second concern, ATF does not believe that extending the term of import permits from 1 year to 2 years will compromise safety and national security. Most annual ATF Form 6 applications (roughly 9,000 of the approximately

11,000 applications) are filed by federally licensed or registered importers. Customs and Border Protection (CBP) of the Department of Homeland Security verifies the license/registration and permit are still valid at the time of importation. In addition, Federal firearms licensees are subject to periodic inspections by ATF industry operations investigators who will have access to the firearms in inventory and any associated paperwork concerning acquisition and disposition of these firearms. The majority of these permit applications are for sporting firearms being imported into the United States. These firearms do not require any supporting documentation for import nor are they subject to any additional regulations beyond the license, permit, and AECA registration requirements. Imports of National Firearms Act weapons represent a minority of the import applications filed. NFA weapons are generally not importable except under very limited circumstances (i.e. for the government) and those restrictions would still be applicable. Therefore, the concerns for public safety and national security when extending the term of import permits from 1 to 2 years is minimal.

The remaining 2,000 applications represent imports of defense articles that are not firearms or ammunition (e.g., gas masks, engines for military vehicles, aircraft fuselages). The majority of these articles are not subject to further regulation once in the United States nor are they subject to requirements beyond the ATF Form 6 at the time of importation. For example, in order to import a gas mask for resale, an importer need only file the ATF Form 6 and be registered under the AECA. There is no limit on the amount they may import and they are not usually restricted by State or local governments. However, ATF may deny, suspend, or revoke any import permit due to violations of law. For the reasons discussed above, ATF believes that safety and security will not be compromised by extending the validity period of a permit every 2 years instead of each

year. ATF also retains the authority to revoke any approved permit pursuant to any changes in the law, interpretation of the law, or changes to the regulations.

Comments Received in Opposition

One of the commenters questioned the Department's authority to issue regulations without specific congressional authorization. The second commenter indicated opposition to extending the term of import permits from 1 year to 2 years:

I think the nature of the items being shipped are of such gravity and danger that it is necessary to have strict limits on importation. If an importer would like to ship these weapons or articles of war, they should be subjected to a strict application standard and validity period.

As an alternative, the commenter suggests that the process for renewing an application should be less burdensome. According to the commenter, "[t]his would provide for the continuance of current rule, while providing a less workload for both parties. This would still decrease the economic burden somewhat and continue the policy of having standard applications only valid for one year."

Department Response to Comments in Opposition

Regarding ATF's authority to issue regulations, the Attorney General is responsible for enforcing the provisions of section 38 of the Arms Export Control Act of 1976 (AECA), 22 U.S.C. 2778, that relate to the permanent importation of defense articles and defense services; the National Firearms Act (NFA), 26 U.S.C. Chapter 53, and the Gun Control Act of 1968 (GCA), 18 U.S.C. Chapter 44, relating to commerce in firearms and ammunition. The Attorney General has delegated responsibility for the enforcement of these statutes to the Director of ATF, subject to the direction of the Attorney General and the Deputy Attorney General. 28 CFR 0.130. This rule is being promulgated by the Attorney General, pursuant to authority vested in him under those statutes.

The second commenter objected to extending the term of import permits to 2 years, arguing that the nature of the articles being imported warrants strict limits on importation. While the Department acknowledges the commenter's concern, it does not believe that extending the term of import permits from 1 year to 2 years will have a negative effect on public safety or national security. As stated in the response above, most annual ATF Form 6 applications are filed by federally licensed or registered importers. Furthermore, all importers are subject to periodic compliance inspection by ATF. The majority of all permit applications are for sporting firearms being imported into the United States, which do not require any supporting documentation for import. Therefore, ATF believes that a 2-year permit lifespan will not undermine its ability to ensure compliance with the law and regulations, and that public safety and national security will not be compromised by allowing ATF to review this supporting documentation every 2 years instead of each year.

Rather than extending the term of an import permit to 2 years, the same commenter stated that ATF should make the current import process less burdensome. ATF continually evaluates its regulatory processes to determine, *inter alia*, whether they can be streamlined or simplified without undermining ATF's regulatory responsibilities. ATF believes that extending the term of an import permit to 2 years meets those criteria, and it will continue to explore additional opportunities to simplify the import permit process.

V. Final Rule

This final rule adopts without substantive change the proposed amendments that extend the term of import permits for firearms, ammunition, and defense articles from 1 year to 2 years.

How This Document Complies With the Federal Administrative Requirements for Rulemaking

A. Executive Orders 12866 and 13563

This rule has been drafted and reviewed in accordance with Executive Order 12866, “Regulatory Planning and Review,” section 1(b), The Principles of Regulation, and in accordance with Executive Order 13563, “Improving Regulation and Regulatory Review,” section 1, General Principles of Regulation, and section 6, Retrospective Analyses of Existing Rules. The Department of Justice has determined that this rule is not a “significant regulatory action” under Executive Order 12866, section 3(f).

Further, both Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Department has assessed the costs and benefits of this regulation and believes that the regulatory approach selected maximizes net benefits.

Executive Order 13563 section 6, Retrospective Analyses of Existing Rules, directs agencies to develop a plan to review existing significant rules that may be “outmoded, ineffective, insufficient, or excessively burdensome,” and to make appropriate changes where warranted. The Department selected and reviewed this rule under the criteria set forth in its Plan for Retrospective Analysis of Existing Rules. During this review, ATF calculated that it processes approximately 11,000 import applications each year. Approximately 82 percent of those applications (9,000) are submitted by federally

licensed or registered importers. ATF estimates that it takes a compliance officer employed by a federally licensed or registered importer approximately 30 minutes to complete an ATF Form 6 permit application. According to the Occupational Employment Statistics (May 2011), published by the Bureau of Labor Statistics, U.S. Department of Labor, the average hourly wage of a compliance officer is \$30.66. If the term of an import permit was extended to 2 years, ATF estimates that the number of ATF Form 6 permit applications submitted by licensed or registered importers will decrease, perhaps as much as by half. Reducing the number of permits submitted by the industry by half (4,500) would result in an annual savings of approximately \$68,985.

Increasing the term of an import permit to 2 years would also result in an economic benefit for ATF. ATF employs data entry contractors who spend an average of 2 hours completing quality review and data entry functions for each import application. The average salary of a contractor is \$14 per hour. ATF examiners typically spend 4 hours processing an ATF Form 6 application. The average hourly rate for an examiner is \$24.74. If the number of applications submitted by the industry was reduced to 4,500 each year, the annual savings to ATF would be approximately \$571,320.

B. Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, “Federalism,” the Attorney General has determined that this regulation will not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

C. Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, “Civil Justice Reform.”

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. The Attorney General has reviewed this rule and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

The Department believes that this rule will have a positive economic impact on both the industry and ATF. The number of permits and the time required for industry to file those permits and for ATF to process them will be significantly reduced.

An industry compliance officer spends approximately 30 minutes completing an ATF Form 6. According to the Occupational Employment Statistics (May 2011), published by the Bureau of Labor Statistics, United States Department of Labor, the average hourly wage of a compliance officer is \$30.66. Reducing the number of permits submitted by the industry by half (4,500) would result in an annual savings of approximately \$68,985.

E. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment,

productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

F. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

G. Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act. ATF Form 6 has been revised under currently approved OMB control number 1140-0005 to reflect the 2 year (24 months) amended period of validity for import permits.

Disclosure

Copies of the notice of proposed rulemaking (NPRM), all comments received in response to the NPRM, and this final rule will be available for public inspection by appointment during normal business hours at: ATF Reading Room, Room 1E-062, 99 New York Avenue, NE., Washington, DC 20226, telephone (202) 648-8740.

Drafting Information

The author of this document is Denise Brown, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives.

List of Subjects

27 CFR Part 447

Administrative practice and procedure, Arms control, Arms and munitions, Authority delegations, Chemicals, Customs duties and inspection, Imports, Penalties, Reporting and recordkeeping requirements, Scientific equipment, Seizures and forfeitures.

27 CFR Part 479

Administrative practice and procedure, Arms and munitions, Authority delegations, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting and recordkeeping requirements, Research, Seizures and forfeitures, Transportation.

Authority and Issuance

Accordingly, for the reasons discussed in the preamble, 27 CFR parts 447 and 479 are amended as follows:

PART 447—IMPORTATION OF ARMS, AMMUNITION AND IMPLEMENTS OF WAR

1. The authority citation for 27 CFR part 447 continues to read as follows:

Authority: 22 U.S.C. 2778.

§ 447.43 [Amended]

2. In § 447.43, paragraph (a) is amended by removing the phrase “one year” and adding in its place the phrase “two years”.

PART 479—MACHINE GUNS, DESTRUCTIVE DEVICES, AND CERTAIN OTHER FIREARMS

3. The authority citation for 27 CFR part 479 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 479.111 [Amended]

4. In § 479.111, paragraph (a) is amended by removing the phrase “one year” in the eighth sentence and adding in its place the phrase “two years”.

January 31, 2014.

Date

Eric H. Holder, Jr.
Attorney General

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